IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2013 of 2002

HONOURABLE MR.JUSTICE KS JHAVERI

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KHIMJIBHAI RAJABHAI SOLANKI - Appellant(s)
Versus
RAM PLASTIC INDUSTRIES & 1 - Defendant(s)

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Appearance :
MR PANKAJ R DESAI for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
MR KK NAIR for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/08/2006

ORAL JUDGMENT

1. This appeal is directed against the judgement and award dated 31st July 2002 passed by the Commissioner for Workman's Compensation in Workmen Compensation (Fatal) Case No.38 of 1992 whereby the the Commissioner has awarded a sum of Rs.40320/- along with 6% interest.

2. The case of the claimant was that the daughter Manju Khimjibhai Solanki was working as labourer with respondent no.1 and on 3.11.1989 she was raped and murdered by some persons in the factory premises during the course of her employment. The claimant has therefore filed the aforesaid case which was partly allowed by awarding a sum of Rs.40320/-.

3. The present appeal has been filed on the limited ground

that the plea of penalty was rejected by the Commissioner.

4. Learned Advocate for the appellant submitted that the Commissioner has committed an error in not awarding penalty without considering the provisions of Workmen's Compensation Act.

5. As a result of hearing and perusal of the respondent submitted that the Commissioner has considered all the facts and circumstances of the case and therefore this Court may not cause any interference.

6. As a result of hearing and perusal of the record it is found that the incident was of the year 1989 and the claim case was preferred in the year 1992. Therefore the application itself was filed after a period of three years and that too in a case of murder in the factory premises. From the record it emerges that since it was a case of murder the employer genuinely believed that it was not a case of accident. The penalty is a discretion of the authority and unless it has been shown that the conduct of the employer is so perverse that the penalty is required to be imposed. In the present case it cannot be said that the employer was at any fault.

7. In the premises aforesaid, I do not find any merits in the matter and the same is therefore dismissed. No order as to costs.

[K.S. JHAVERI, J.]

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